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Legal grounds for continuing military service by servicemen after an unauthorized abandonment of a military unit

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Summary: 1. Introduction. 2. Literature review. 3. Methods. 4. Results. 4.1. Ukrainian legislation. 4.2. Judicial practice in Ukraine. 4.3. Comparative practice. 4.4. Comparative table. 4.5. Legal reform proposals. 4.6. Key findings. 5. Discussion. 6. Conclusions. 7. References.

Abstract: This study dives into what actually happens when a Ukrainian soldier comes back to duty after leaving their unit without permission. The researchers didn't just skim the surface—they went through 42 laws and court decisions from 2024 and 2025. They also looked at how the U.S., France, Germany, Canada, and the U.K. handle the same thing. Here's the deal: Ukraine's laws are still pretty tough and don't really explain how someone can come back voluntarily or get their position back. Judges aren't always consistent either, so no one really knows what to expect. In other countries, the approach is a lot more balanced. They mix discipline with support, even offer psychological help, and try to be fair while still holding soldiers responsible. The study doesn't just point out the problems—it offers some solid fixes. It says Ukraine needs to set clear rules for judges and spell out how much authority commanders have. The researchers think Ukraine should also create a military ombudsman, so soldiers have someone to turn to if they run into trouble. And real rehab programs for those who want to return? Those are a must. Put all this together, and Ukraine's system would be a lot closer to NATO standards, the laws would make more sense, and soldiers' rights would actually mean something.

Keywords: Military Service, Criminal Liability, Unauthorized Abandonment, Reinstatement, Military Justice Reform, Comparative Law, Ukraine.

Resumo: La relevancia del estudio se ve subrayada por el hecho de que el desempeño eficaz de las responsabilidades por parte del personal militar constituye un elemento fundamental de la capacidad de defensa del país. El objetivo del estudio es profundizar en las razones para la reanudación del servicio militar tras la baja voluntaria de los soldados en su unidad militar. Las metodologías empleadas abarcaron la lógica formal, el análisis jurídico comparado y la hermenéutica jurídica. Los resultados corroboran que el abandono no autorizado de una unidad militar, en comparación con la desertión, es un acto socialmente menos peligroso, ya que generalmente implica el regreso del militar a su lugar de servicio. La novedad científica reside en la identificación del diálogo activo entre el ejército y la sociedad como una herramienta preventiva clave. Además, el estudio incluye un análisis comparativo de los enfoques en países como Estados Unidos, Francia, Alemania y Canadá, lo que proporciona información sobre mecanismos más flexibles y rehabilitadores para la reintegración de militares tras ausencias no autorizadas. Estas prácticas internacionales ofrecen valiosas lecciones para perfeccionar el sistema de justicia militar de Ucrania. Investigaciones futuras podrían centrarse en fortalecer la eficacia y la claridad jurídica de las causales para la continuación del servicio militar tras tales eventos.

Palavras-Chave: Cumplimiento De Funciones, Servicio Militar, Fuerzas Armadas, Código Penal, Garantías Sociales, Derecho Militar Internacional, Análisis Jurídico Comparado.

1. Introduction

Ukraine's defense isn't just about having the best gear—it's about people who know their jobs and actually follow through. Sure, equipment matters, but the real strength comes from soldiers who take responsibility. When people show up and do

what's expected, the command stays solid, the government can function, and the country actually has a shot.

This study gets into a tricky question: what happens when someone leaves their unit without permission but then comes back and wants to keep serving? It's not quite desertion. In cases like this, someone steps away for a while-maybe they didn't even plan to-but they return on their own. Desertion's another story. That's when someone leaves for good and isn't coming back. Telling the difference matters if you want punishments to actually be fair and give people a reason to come back.

The research digs into how Ukrainian law handles this and looks at how other countries deal with the same problem. It also asks if Ukraine's approach really works in wartime, and whether it's actually fair and respects basic human rights.

The study's purpose is to identify the legal reasons that permit soldiers to maintain their membership in the military after they have been unauthorized to quit their jobs. This will be accomplished by determining the legal grounds themselves. The key objectives are as described below: to investigate the practices of the Ukrainian judiciary and the legal norms that pertain to this topic. Thus, from a legal point of view, there is a difference between desertion and criminal abandonment.

It is necessary, based on analogous experience, to assess the effectiveness of the regulations that are currently in existence and to provide recommendations for modifications to the legal system.

When it comes to the process of expanding the legal framework for the reinstatement of soldiers, the findings are developed with the intention of serving as a guide for politicians, legal practitioners, and authorized military personnel. Furthermore, the study offers a contribution to the maintenance of the rule of law in military justice during times of war, which is an important aspect of the field.

2. Literature review

People have always tried to dodge military service-it's nothing new. Rouanet and Piano pointed out⁶ that Napoleon shook things up by building huge armies through mass conscription, but even before him, Tsar Peter the Great overhauled Russia's army by formally drafting regular citizens.⁷ His reforms ended up shaping how later European countries built their own big armies. When it comes to desertion, Nussio and Ugarriza⁸ found that soldiers usually walk away because of personal reasons or tough situations-sometimes it's all in their heads, sometimes it's about what's going on around them.

Ashtiyani et al.⁹ and Itsik¹⁰, and others showed that figuring out the social and institutional reasons behind desertion helps governments make better policies and keep risky behavior in check. Piano and Rouanet¹¹ insisted that an army's strength depends on stopping desertion before it becomes a real problem.

Nainggolan and Esther¹² made it clear: the heart of desertion is leaving your

⁶ ROUANET, L., PIANO, E. E. "Drafting the Great Army: The Political Economy of Conscription in Napoleonic France", *The Journal of Economic History*, v. 83, n. 4, 2023, p. 1057-1100. <https://doi.org/10.1017/S0022050723000360>

⁷ BESKROVNYI, L. G. *Russkaia armiia i flot v XVIII veke (Ocherki)*, Military Publishing. 1958.

⁸ NUSSIO, E., UGARRIZA, J. E. "Why rebels stop fighting: organizational decline and desertion in Colombia's insurgency", *International Security*, v. 45, n. 4, 2021, p. 167-203. https://doi.org/10.1162/isec_a_00406

⁹ ASHTIYANI, J. C., KEYSOMI, F. A., JAHANDARI, P. RAHNEJAT, A. M. "Investigating the causes of desertion: a qualitative study", *Military Caring Sciences*, v. 8, n. 4, 2022, p. 319-331. <https://doi.org/10.52547/mcs.8.4.319>

¹⁰ ITSIK, R. "Compulsory military service as a social integrator", *Security and Defense Quarterly*, v. 30, n. 3, 2020, p. 65-80. <https://doi.org/10.35467/sdq/124710>

¹¹ PIANO, E. E., ROUANET, L. "Desertion As Theft", *Forthcoming, Journal of Institutional Economics*, 2019. <https://doi.org/10.2139/ssrn.3347176>

¹² NAINGGOLAN, Y., ESTHER, J. "Legal Settlement of the Crime of Desertion in Absentia in

post without permission. Syabilarrasyad et al.¹³ said we need to be strict about the difference between true desertion and just taking off for a bit without permission. Edwin¹⁴ added that punishment has to send a message, making sure both soldiers and civilians get that desertion is a real crime.

Subagiyo¹⁵ pointed out that even today, the military still feels like a closed-off world, separate from everyday life.

Wangi and Lisdiyono¹⁶ argued that every step-whether a soldier leaves, stays gone, or comes back-should follow strict legal rules. Eldridge¹⁷ noticed that when soldiers desert, it often shows how they struggle to balance their military identity with their civilian self, and how their priorities shift.

Milne¹⁸ said we still don't know enough about this from a legal or historical angle. Wilson and Ruger¹⁹ argued that while military service shapes people's lives, its legal and social sides usually get ignored.

Shepherd et al.²⁰ blamed this on the old divide between military and civilian culture.

Molendijk and Kalkman²¹ warned that military research today feels way too theoretical and out of touch with what soldiers actually experience. Lira and Chandrasekar²² saw the same problem-studies are scattered and don't talk to each other.

So, while there's plenty out there on why soldiers desert and what pushes them to do it, hardly anyone digs into the legal rules about coming back to service after leaving. What's missing is a clear legal look at when-and how-soldiers can lawfully return after desertion.

the Jurisdiction of Military Court I-02", *Golden Ratio of Data in Summary*, v. 5, n. 2, 2025, p. 278–283. <https://doi.org/10.52970/grdis.v5i2.823>

¹³ SYABILARRASYAD IRIANTO, J., SUHARIADI, F. "Analysis of desertion crime policy for army personnel in west aceh", in *Proceedings of the 7th international conference on social and political sciences (icosaps 2022)*, Atlantis Press SARL, Paris, 2022, p. 203–209. https://doi.org/10.2991/978-2-494069-77-0_28

¹⁴ EDWIN, M. Chk. "Soldier discipline law: a study of military law and the crime of desertion", *Focus: Journal of Law*, v. 4, n. 2, 2023, p. 74–86.

¹⁵ SUBAGIYO, D. T. "Criminal accountability of members of the Indonesian national army (TNI) who committed desertion", *International Journal of Social Science and Human Research*, v. 06, n. 06, 2023. <https://doi.org/10.47191/ijsshr/v6-i6-23>

¹⁶ WANGI, A. G., LISDIYONO, E. "Reformulation of criminal law policy in the process of resolving desertion cases for Indonesian national military that gets justice", in *Advances in social science, education and humanities research*. Atlantis Press SARL, Paris, 2023, p. 274–284. https://doi.org/10.2991/978-2-38476-024-4_30

¹⁷ ELDRIDGE, C. "Absence, Agency and Empire: Desertion from the French Army during the First World War", *War in History*, v. 30, n. 3, 2022, p. 277–299. <https://doi.org/10.1177/09683445221133046>

¹⁸ MILNE, A. "The Typography of Forgetting: The Unsettling of Dominant Social Narratives in the Resurfacing of a Military Deserter in Family Memory", *Genealogy*, v. 8, n. 2, 2024, p. 60. <https://doi.org/10.3390/genealogy8020060>

¹⁹ WILSON, S. E., RUGER, W. "Military Service, Combat Experience, and Civic Participation", *Armed Forces & Society*, v. 47, n. 3, 2020, p. 551–585. <https://doi.org/10.1177/0095327X20934885>

²⁰ SHEPHERD, S., SHERMAN, D. K., MACLEAN, A., KAY, A. C. "The Challenges of Military Veterans in Their Transition to the Workplace: A Call for Integrating Basic and Applied Psychological Science", *Perspectives on Psychological Science*, v. 16, n. 3, 2020, p. 590–613. <https://doi.org/10.1177/1745691620953096>

²¹ MOLENDIJK, T., KALKMAN, J. P. "Towards a Soldier-Based View in Research on the Military: An Empathetically Critical Approach", *Social Sciences*, v. 12, n. 2, 2023, p. 51. <https://doi.org/10.3390/socsci12020051>

²² LIRA, L. L., CHANDRASEKAR, J. "The state of research in veterans' studies: a systematic literature review", *Journal of Veterans Studies*, v. 6, n. 2, 2020, p. 46. <https://doi.org/10.21061/jvs.v6i2.191>

3. Methods

This study unfolded in three steps.

First, we gathered legal sources and scientific research about the topic. We dug through national laws, international rules, and court decisions to nail down what exactly the issue covers.

Next, we took a hard look at 2024 statistics about how servicemen get prosecuted-both criminally and administratively-for leaving their posts without permission. I pored over court materials from Ukraine and other countries, searching for trends in how the law gets enforced and what judges actually decide.

In the third stage, I lined up Ukraine's experience against what's happening abroad. Then made conclusions, making sure to factor in the latest legal changes and court cases.

Three main methods throughout:

1. The formal-logical method. It helped me break down the legal rules about responsibility for military offenses.

2. With the comparative legal method, I put side by side the concepts of unauthorized departure and desertion, spotted what's similar or different, and checked out how other countries handle cases when soldiers come back after leaving on their own.

3. The legal hermeneutic method let me read legal texts in context. Basically, seeing how the law plays out in real military life.

In total, I reviewed 42 rules and regulations about leaving the service and getting reinstated. I also pulled 31 documents from Science Direct that honed in on how these acts get classified in Ukraine and other places.

I sifted through Ukrainian court cases, from local judges all the way to the Supreme Court, and found there's no clear agreement on what counts as "voluntary dismissal." Some courts treat a serviceman's absence as desertion, others see it as just a temporary leave. No real standard.

Looking abroad, I checked out laws and court decisions from Germany, France, and the U.S. Germany's Wehrstrafgesetz draws a line between short absences (which get handled with discipline) and full-on desertion (a criminal offense). In France, the focus is on protecting soldiers' rights and separating administrative from criminal punishments. U.S. courts, following the Uniform Code of Military Justice, separate intentional desertion from absences driven by stress or mental health problems.

Ukraine doesn't have this kind of detailed system. That's why I leaned so heavily on comparing it with other countries-to see what's working elsewhere, and to spell out what reforms Ukraine needs for clearer laws, fairer penalties, and better ways to bring soldiers back into the fold.

4. Results

4.1. Ukrainian legislation

It is against the law in Ukraine (Article 407)²³ to leave your armed unit without permission. If you break the law, there aren't many second chances or ways to keep working. And this doesn't match up with what's happening on the ground during martial law. Combat breaks people down mentally and physically, but the law doesn't really take that into account.

Law No. 3902-IX²⁴ tried to make things a little less harsh. There is now a narrow

²³ PROTOCOL. Article 407. Unauthorized leaving of a military unit or place of service, 2025.

²⁴ SUPREME PARLIAMENT OF UKRAINE. Law of Ukraine No. 3902-IX: On Amendments to the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, and Other Laws of Ukraine on Improving Criminal Liability for Crimes Against the Established Procedure of

way for someone to come back on their own and avoid being charged. It's a step in the right direction, but it's not stable yet. There aren't any real rules in the law about how commanders should decide whether to take someone back. As a result, choices may seem random or even unfair.

In the end, Ukrainian law still acts like there is peace. The way people think and feel during war is not given much attention. Discipline is given more attention. There are too many rules for battle, when stress, pain, and constant fighting change what people need and how they act.

4.2. Judicial practice in Ukraine

Court analysis for 2024–2025 shows inconsistent rulings. The Supreme Court applied Article 407²⁵ strictly, confirming liability even when a serviceman lacked a medical evaluation. This indicates a preference for formal legal interpretation over context. In contrast, district and administrative courts often ruled differently²⁶.

Case No. 116609537²⁷ ended in reinstatement because the prosecution failed to prove the serviceman's intent to abandon his post. Similar results occurred in the Lebedynskyi²⁸ and Kirovohrad District Courts²⁹, where servicemen were allowed to continue service after voluntary return and commander approval.

This pattern reveals a divide between the formal letter of the law and its application in practice. While some courts prioritize discipline, others recognize individual circumstances and aim for reintegration. The absence of unified judicial guidelines leads to unequal decisions.

4.3. Comparative practice

Look at how other countries do it, and you'll notice a lot more structure-and you kind of know what to expect when it comes to desertion. In the US, for example, desertion counts as a big deal under the Uniform Code of Military Justice³⁰. Still, if someone turns themselves in before getting caught, they usually just face disciplinary action instead of full-blown criminal charges.

France and Germany try to keep things fair³¹. If a soldier disappears for just a

Military Service During Martial Law, 2025. Available at: <https://zakon.rada.gov.ua/laws/show/3902-20#Text> (accessed on 7th September 2025).

²⁵ PROTOCOL. Article 407. Unauthorized leaving of a military unit or place of service, 2025. Available at: https://protocol.ua/ua/kriminalniy_kodeks_ukraini_stattya_407/ (accessed on 4th September 2025).

²⁶ LIHA ZAKON. Criminal Code of Ukraine: Law of Ukraine No. 2341-III of April 5, 2001, 2025. Available at: <https://ips.ligazakon.net/document/C030010> (accessed on 6th September 2025).

²⁷ DNIPROPETROVSK DISTRICT ADMINISTRATIVE COURT. Decision No. 116609537 of January 29, 2024 in case No. 160/14247/22, 2024. Available at: <https://youcontrol.com.ua/catalog/court-document/116609537/> (accessed on 31st August 2025).

²⁸ LEBEDYNSKYI DISTRICT COURT OF SUMY REGION. Court decision No. 125517382 of February 28, 2025 in case No. 950/3816/23, 2025. Available at: <https://youcontrol.com.ua/catalog/court-document/125517382/> (accessed on 4th September 2025).

²⁹ KIROVOHRAD DISTRICT ADMINISTRATIVE COURT. Court decision No. 121006082 of August 13, 2024 in case No. 340/6444/23, 2024. Available at: <https://youcontrol.com.ua/catalog/court-document/121006082/> (accessed on 5th September 2025).

³⁰ US DEPARTMENT OF DEFENSE. Uniform Code of Military Justice. December 20, 2019. Available at: <https://jsc.defense.gov/Portals/99/Documents/UCMJ%20-%2020December2019.pdf> (accessed on 2th September 2025).

³¹ JOURNAL OFFICIEL "LOIS ET DÉCRETS". JORF n° 0085 du 9 avril 2025, 2025. Available at: <https://www.legifrance.gouv.fr/jorf/jo/2025/04/09/0085> (accessed on 3th September 2025).

little while, the unit handles it. But if it keeps happening, or it's clearly intentional, then the courts step in³².

The UK and Canada feel a bit more flexible. When a soldier comes back on their own, the commander decides if they're allowed back. And if someone's dealing with stress or trauma, they get a psychological evaluation before anyone talks about a trial^{33,34}. What really jumps out in all these systems is the balance. They make sure people are held responsible, but they leave space for people to turn things around. Voluntary return doesn't feel like just another rule you break-it's actually a step toward getting your life back together.

4.4. Comparative table

Table 1 compares the legal approaches to continuing military service after unauthorized abandonment in selected countries.

Table 1. Comparative characteristics of approaches to continuing military service after unauthorized abandonment of a military unit.

| Country | Basic approach | Continuation of Service | Key Features |
|----------------|---------------------------------|-------------------------------|--|
| Ukraine (2025) | Punitive (Art. 407 CCU) | Limited, commander's decision | No clear criteria, fragmented practice, |
| USA | Judicial discretion with (UCMJ) | Yes, before arrest | Non-judicial measures preferred |
| France | Disciplinary | Yes, with loss of privileges | Criminal charges only for repeat cases |
| Germany | Disciplinary | Yes | Temporary detention up to 21 days |
| Canada | Administrative | Yes | Psychiatric assessment and rehabilitation |
| Great Britain | Administrative | Yes | Human-centered approach; minimal prosecution |

Source: elaborated by the author based on the analysis^{35,36,37,38,39}.

The comparison confirms that Ukraine lacks a layered system like those in NATO states. The improvements that were implemented in 2024 enhanced flexibility, although they are still insufficient and poorly integrated.

4.5. Legal reform proposals

The study lays out five big reforms Ukraine needs to catch up with international

³² BUNDESMINISTERIUM DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ. Gesetze im Internet, 2025. Available at: <https://www.gesetze-im-internet.de> (accessed on 30th August 2025).

³³ LEGISLATION.GOV.UK. Main Page, 2025. Available at: <https://www.legislation.gov.uk> (accessed on 6th September 2025).

³⁴ JUSTICE LAWS WEBSITE. National Defence Act (R.S.C., 1985, c. N-5),2025. Available at: <https://laws-lois.justice.gc.ca/eng/ACTS/N-5/index.html> (accessed on 4th September 2025).

³⁵ US DEPARTMENT OF DEFENSE. Uniform Code of Military Justice. 2019.

³⁶ BUNDESMINISTERIUM DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ. Gesetze im Internet. 2025.

³⁷ JOURNAL OFFICIEL "LOIS ET DÉCRETS". 2025.

³⁸ JUSTICE LAWS WEBSITE. National Defence Act (R.S.C., 1985, c. N-5).

³⁹ LEGISLATION.GOV.UK. Main Page, 2025.

standards. First, set clear rules for judges and prosecutors so everyone's working from the same playbook. Then, put real limits on commanders-people should be able to challenge decisions, and someone needs to oversee the process. Third, bring in a military ombudsman to keep tabs on how reinstatements really work, not just on paper. Fourth, make psychological rehab a core part of bringing people back, not something you tack on at the end. And last, team up with NATO partners so legal systems don't clash and everything runs smoothly.

Table 2: Proposed changes to the law and the anticipated effects of those changes.

Table 2. Proposed legal reforms and their expected impact.

| No. | Reform in the derrection of | The changes that will be made | The anticipated outcome | Issues that are being resolved |
|-----|--|--|--|---|
| 1 | Instructions from the court that have been codified | The creation of guidelines for military prosecutors and judges that are based on previous cases | The unification of methods for evaluating volunteers' willingness to return | Inability to arrive at a consistent understanding of legal rules |
| 2 | Commanding officers are granted discretionary authority while being supervised | Providing commanders with the authority to make judgments about the return of troops to the military, subject to analysis | An equilibrium between the power of command and the safeguards of the law | Concerns about the misuse of authority and disparities in application |
| 3 | Military ombudsmen institutes | Establishing an impartial body to investigate complaints and ascertain whether or not judgments are in accordance with the law | The enhancement of the legal protection afforded to members of the armed forces | Insufficient oversight from the outside over commanders |
| 4 | Evaluations of psychological characteristics and rehabilitation | Psychiatric treatment and rehabilitation strategies should be included into the process of reintegrating the individual | Discipline that has been repeatedly violated should be prevented | Ignoring the psychological aspects that contribute to abandonment |
| 5 | The coordination of international efforts with NATO | The formulation of policy papers or the formation of bilateral agreements based on the procedures performed by partner nations | The application of international norms to the administration of military justice | A significant gap exists between the approaches used by the Ukrainian system and those utilized by its partners |

Source: elaborated by the author based on analysis^{40,41,42}.

⁴⁰ INISTRY OF HEALTH OF UKRAINE. Psychologists and psychotherapists in Ukraine will be certified - a law on the mental health care system has been adopted, 2025. Available at: <https://moz.gov.ua/uk/psihologiv-ta-psihoterapevtiv-v-ukrayini-sertifikuvatimut-uhvaleno-zakon-pro-sistemu-ohoroni-psihichnogo-zdorov-ya> (accessed on 3th September 2025).

4.6. Key findings

Ukrainian laws haven't really kept up with the realities of war. Judges don't always apply the rules the same way, so nobody's ever quite sure where they stand. When you look at how other countries handle this, it's clear they get better results by focusing on rehabilitation and giving commanders more room to make decisions. To fix things, reforms need to lay out clear rules, set up real oversight, and weave in psychological support. All of this gives a solid legal base for creating fair, practical steps for what happens when someone returns to service after leaving without permission.

5. Discussion

Military service sits at the very core of state security. Strizhkova⁴³ calls it the shield that protects both sovereignty and social stability. Beňuška and Nečas⁴⁴ jump in to remind us that military matters always split public opinion, but Goncharuk⁴⁵ gets straight to the point-without solid legal rules, the military just can't do its job.

Pashchenko⁴⁶ says criminal law should back up military duty with clear, fair protections and penalties. Nestulia⁴⁷ insists the system needs to reflect what actually happens in combat, not just theory. Itsik⁴⁸ sees military service as something that pulls society together, building national unity. Kostiuik⁴⁹ says studying military offenses takes more than just looking at the law in a vacuum; you need a bigger institutional lens. McPhee et al.⁵⁰ agree-military justice has to work as a whole, with enforcement that's consistent from top to bottom.

⁴¹ RESHETYLOVA, O. The draft law on the establishment of the institution of a military ombudsman is already at the finish line, 2025. Available at: <https://armyinform.com.ua/2025/04/02/zakonoprojekt-pro-stvorenniya-instytutczyi-vijskovogo-ombudsmena-vzhe-na-finishnij-pryamij-olga-reshetylova/> (accessed on 5th September 2025).

⁴² THE VERKHOVNA RADA OF UKRAINE. On adoption as a basis the draft Law of Ukraine on amendments to the Law of Ukraine "On the Fundamentals of National Resistance" regarding the involvement of war veterans in the organization and implementation of training of citizens of Ukraine for national resistance: Resolution of February 25, 2025 No. 4256-IX, 2025. Available at: <https://zakon.rada.gov.ua/go/4256-20> (accessed on 5th September 2025).

⁴³ STRIZHKOVA, A. "Argumentation of the special social care concept for war veterans in Ukraine", Law and Innovation Society, v. 2, n. 23, 2024, p. 25–31. [https://doi.org/10.37772/2309-9275-2024-2\(23\)-2](https://doi.org/10.37772/2309-9275-2024-2(23)-2)

⁴⁴ BEŇUŠKA, T., NEČAS, P. "On societal security of the state: applying a perspective of sustainability to immigration", Entrepreneurship and Sustainability Issues, v. 9, n. 2, 2021, p. 473–487. [https://doi.org/10.9770/jesi.2021.9.2\(31\)](https://doi.org/10.9770/jesi.2021.9.2(31))

⁴⁵ GONCHARUK, V. "Survival of the smartest? Defense AI in Ukraine", in Contributions to security and defense studies, Springer Nature Switzerland, Cham, 2024, p. 375–395. https://doi.org/10.1007/978-3-031-58649-1_17

⁴⁶ PASHCHENKO, E. "Criminality of military servants of the army and other military forms of Ukraine in the conditions of Russian aggression against Ukraine. Criminology aspect", Uzhhorod National University Herald. Series: Law, v. 2, n. 81, 2024, p. 324–329. <https://doi.org/10.24144/2307-3322.2024.81.2.50>

⁴⁷ NESTULIA, O. "Reintegration of war veterans into peaceful life in Ukraine: current state and future challenges", Economics and Regions, v. 4, n. 95, 2024, p. 89–96.

⁴⁸ ITSIK, R. "Compulsory military service as a social integrator", p. 65–80.

⁴⁹ KOSTIUUK, I. "Forensic classification of military criminal offenses and the place of abuse of power or authority by a military official", Law Journal of the National Academy of Internal Affairs, v. 14, n. 4, 2024, p. 66–77. <https://doi.org/10.56215/naia-chasopis/4.2024.66>

⁵⁰ MCPHEE, D., HESTER, M., BATES, L., LILLEY-WALKER, S. J., PATSIOS, D. "Criminal justice responses to domestic violence and abuse in England: an analysis of case attrition and inequalities using police data", Policing and Society, v. 32, n. 8, 2021, p. 963–980. <https://doi.org/10.1080/10439463.2021.2003358>

Kaplina et al.⁵¹ argue that military law should stand on its own, as a practical, logical system that works in real battle, not just on paper.

Tkachenko⁵² points out that when soldiers leave without permission, it's never simple—it's tangled up in both legal questions and the harsh realities of war. Semenenko et al.⁵³ say responsibility for leaving your post has changed as the military itself has reformed over time. Hryhorenko et al.⁵⁴ shift focus to paramilitary groups but miss the fact that legal gaps are growing inside the official army too. The numbers don't lie: crimes that break down the order of service are the biggest issue for reform right now.

Three big barriers keep the law from working as it should:

First—constitutional limits. Ukraine's Constitution, especially Articles 8, 19⁵⁵, and 64⁵⁶ puts clear brakes on how much the state can interfere with people's rights. That's a good thing, but it also makes snap decisions during martial law much harder. Even in a crisis, the Constitutional Court insists that any limits stay fair and legal.

Second—administrative mess. The Ministry of Defense hasn't spelled out what to do when a serviceman comes back voluntarily. Commanders are left making it up as they go, which leads to random decisions and clashes with Article 24's guarantee of equal treatment⁵⁷.

Third—regulatory gaps. Law No. 3902-IX⁵⁸ is vague. It never clearly says when criminal liability stops and reinstatement starts, so courts are left guessing. Things got worse when military courts shut down in 2010—now, there's no expert body to handle these cases consistently.

As a result, commanders of military units are compelled to make decisions at their own discretion, which creates risks of subjectivity, selective application of law, and violation of the principles of equality, all before the law (Art. 24⁵⁹).

Thirdly, regulatory barriers are manifested in the lack of a unified legal policy

⁵¹ KAPLINA, O., KRAVTSOV, S., LEYBA, O. "Military justice in Ukraine: renaissance during wartime", *Access to Justice in Eastern Europe*, v. 5, n. 3, 2022, p. 120–136. <https://doi.org/10.33327/ajee-18-5.2-n000323>

⁵² TKACHENKO, P. I. "Strengthening liability for unauthorised abandonment of a military unit or place of service in the light of current criminal law issues", *Bulletin of Kharkiv National University of Internal Affairs*, v. 101, n. 2 (Part 2), 2023, p. 189–200. <https://doi.org/10.32631/v.2023.2.48>

⁵³ SEMENENKO, O., FEDIANOVYCH, D., CHUHUI, H., HERASYMENKO, O., MOROZ, I., POLYVODA, M. "Strategic management of the capability development of the armed forces under the influence of military and economic factors", *Social Development and Security*, v. 14, n. 1, 2024, p. 240–255. <https://doi.org/10.33445/sds.2024.14.1.20>

⁵⁴ HRYHORENKO, Ye., PEREDERII, O. CHALIY, M. "The essence and characteristics of paramilitary and armed formations not provided for by law in terms of criminal liability for their creation (Article 260 of the Criminal Code of Ukraine)", *The Journal of VN Karazin Kharkiv National University. Law Series*, n. 35, 2023, p. 185–192. <https://doi.org/10.26565/2075-1834-2023-35-21>

⁵⁵ PRESIDENT OF UKRAINE. Constitution of Ukraine—Section I. Document 254k/96-VR, current, current version—Version dated 01.01.2020, basis-27-IX, 2025. Available at: <https://www.president.gov.ua/ua/documents/constitution/konstituciya-ukrayini-rozdil-i> (accessed on 7th September 2025).

⁵⁶ PRESIDENT OF UKRAINE. Constitution of Ukraine—Section II. Document 254k/96-VR, current, current version—Version dated 01.01.2020, basis-27-IX, 2025. Available at: <https://www.president.gov.ua/ua/documents/constitution/konstituciya-ukrayini-rozdil-ii> (accessed on 7th September 2025).

⁵⁷ SEVENTH ADMINISTRATIVE COURT OF APPEAL. Resolution of the Constitutional Court of Ukraine No. 1-r/2020 approved, 2020. Available at: <https://7aac.gov.ua/uxvaleno-rishennya-konstitucijnogo-sudu-ukraini-1-r2020/> (accessed on 4th September 2025).

⁵⁸ SUPREME PARLIAMENT OF UKRAINE. Law of Ukraine No. 3902-IX, 2025.

⁵⁹ PRESIDENT OF UKRAINE. Constitution of Ukraine—Section II. Document 254k/96-VR, current, current version—Version dated 01.01.2020, basis-27-IX, 2025.

and the fragmentation of secondary legislation. As can be seen, this is confirmed by the analysis of court decisions, in particular case No. 160/14247/22⁶⁰ and No. 950/3816/23⁶¹, in which courts actually fill legal gaps that should be regulated by legislation.

To fix all this, reform has to hit three levels:

First, new laws have to fit with the Constitution. Second, the Ministry of Defense needs to set a clear rulebook for returning soldiers. Third, Parliament should lay out exactly how and when reinstatement happens.

Bottom line: reform only works if the rules are clear, fair, and well-supervised. Military justice isn't just about punishment-it should also help soldiers come back and serve again, as long as they really want to return.

6. Conclusions

This study cuts through the noise: Ukraine's laws let soldiers come back after leaving without permission, but honestly, the rules are a mess. Article 407 in the Criminal Code talks about punishments, but skips over what actually happens if a soldier returns on their own, wants another chance, or tries to get their old job back. Law No. 3902-IX tries to patch things up, but doesn't really offer clear steps or proper oversight.

In real life, courts handle these cases all over the place. Some judges focus on punishment, others see a soldier's return as a positive step. Nobody knows what's coming, and that kind of uncertainty makes people trust the system even less.

Other countries handle this smarter. They balance discipline with real support-counseling, clear rules for coming back, that sort of thing. It keeps order, but doesn't forget about the people who serve.

So, if Ukraine wants to fix this, here's what needs to happen:

Judges and prosecutors need clear rules so cases stop being so unpredictable.

Commanders' powers should be clearly defined, and someone needs to actually check their decisions.

A military ombudsman should stand up for soldiers' rights.

Every soldier coming back should get a psychological evaluation and support before putting the uniform on again.

Ukraine should work with NATO partners to make sure its rules aren't out of step.

Make these changes, and Ukraine's military justice system gets stronger, fairer, and more in line with its allies.

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⁶⁰ DNIPROPETROVSK DISTRICT ADMINISTRATIVE COURT. 2024.

⁶¹ LEBEDYNSKYI DISTRICT COURT OF SUMY REGION. Court decision No. 125517382 of February 28, 2025 in case No. 950/3816/23, 2025.

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